SYNOPSIS OF THE PROPOSED RESEARCH WORK ON THE

TOPIC

CONSTITUTIONAL SAFEGUARDS TO TRIBES IN INDIA: ANANALYTICAL STUDY

A Research synopsis submitted to the Swami Ramanand Teerth Marathwada University Nandedin Partial Fulfillment of the Requirement for registration to the Doctorate Degree Programs

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CONSTITUTIONAL SAFEGUARDS TO TRIBES IN INDIA:AN ANALYTICAL STUDY

Introduction:

Adivasis' are variously referred to such as adim, jamati, indigenous people, originally inhabitants, aboriginal tribes, among other. However Indian Constitution noted that social group as Scheduled Tribes alongside Schedule Caste. In the respect of entitling tribe, there had been heated debate in the constituent assembly. One of the members from among tribal communities Jaipal Singh Munda had insisted that the different social groups exclusively dwelling in forest area should be called aboriginal tribes be treated accordingly hereafter but the chairperson of drafting committee Dr. B. R. Ambedkar convincedJaipalSingh Munda and said that neither aboriginal Adivasi is legal de-jure therefore the term of Scheduled Tribes is proper from future point of view and finally this term unanimously accepted in the Constituent Assembly. Article 342 holds regarding Scheduled Tribes while 360(25)The Constitution of India defines who is or should be called Adivasi or Scheduled Tribes define "such tribes or tribal communities or parts of groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled tribes for the purposes of this constitution.

Being this social group extremely marginalized and historical deprived. Indian Constitution makers made some provisions for its development under some Articles in Indian Constitution for example Article 15 (4) and 16(4) provides special facility for the progress of this tribes in the field of education and social areasalso, it envisages adequate political representation for the tribes. There is specialprovision of reserve seat right from Parliament to Gram panchayat at village level. In addition to this fifth and sixth Schedule are created considering Scheduled Tribestaying in forest areas. Various scheme and plan conceptualization to this Schedule, so that this poor and backward and social group may go ahead along with other depressed class.

In this regard some cases deserve to be studied in order to clarify our point while studying this topic for example In Maneka Gandhi v. Union of India[1] is an ideal

[1]1978 SCC(1)248

case in this case Supreme Court gave a new dimension to Article 21 of the Indian Constitution. It held that right is not merely confined to physical existence within its ambit but includes right to live with human dignity.

Secondly as is said above, Article 16(4) enables the state to make any law regarding to reservation to promotion of regarding Schedule Caste and Schedule Tribes

Now let's try to define what is Adivasi actually because in the process of our reservation our overall thrust on this work only. In India tribal people are called "Adivasi" it means that all tribal people collectively named. The term "Adivasi derives from the Sanskrit word "Adi" which means one who live or resident of particular territory "of earliest times" or "from the beginning" and "vasi" meaning "inhabitant" or "resident" and the indigenous people.[2]

The Tribals are usually referred as Adivasi, its literal meaning is indigenous people. It has near about 705 types of groups which is recognized by India. Most of the Tribal people found in seven northeastern states of India. It indicates Central Tribal belt.

9th August is "International Day of World's Indigenous People", it also called "JagtikAdivasi Din" celebrated in India from many groups of tribal with their traditional costumes and games. Some state has declared holiday on this day.

The Constitution of India provided a provisionto protect the rights of tribalpeople. Safeguard has divided in four parts:educational and cultural safeguards,politically and social. In social safeguards Constitution provides equality before law and equal protection of law to tribal people also, prohibitionof untouchability, and protection of life and personal liberty to people.

Article 16 (4)enable the state to make any law regarding to reservation in promotion for SC/STs.Article16(4B) provides that reserved promotion posts for SC/STs, Tribal people mean the people who areaboriginal, they are called first people, Indigenous people.

[2]Aspiring to be: The Tribal/ Indigenous condition, Indigenous Right at Risk, Page no. 95

Mohan Kumar Singhania v. Union of India[3] Supreme Court held that Article 16 (4) of the Constitution gives the discretionary power to state that it can make any provision relating to reservation to backward class that is socially or educationally.

In Article 366 (25) of the Constitution of India define Schedule Tribes as "such tribes or tribal communities or parts of groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled tribes for the purposes of this constitution.Fifth Schedule of Constitution of India provides administration and control of scheduled area and scheduled tribe.

The special protection gives to tribal people regarding their occupancy, the land of tribal transfer to non-tribal subject to permission of the collector is required. If any occupancy is transferred without permission, it considers invalid and it can be restored to the owner.

Statement of Problem

Even though the Constitution of India has specific provisions for tribal people relating to education and service but still the ratio of education and representation of these community in services is nominal.

Tribal people have their own language difficulties are faced by the people to understand the school language. As a result students don't take interest in the education and they quit school after primary and secondary education. In other words there is a large scale drop-out of Adivasi students as compared with other high class society or dominant caste society.

Tribals hesitate to contact other people, they preferred to live away from other society because they have their own custom, culture, tradition, language, belief system but due to interference of other society culture and language of tribal people become disappeared.

Some groups of Tribal were condemned to be criminal like Paridhi, Munda, if any incident happened these people are suspected persons,even though they don'thave any connection therewith.

[3] (AIR1992 SC 1)

Tribal people are aboriginally in India. They are also part of developing India but still they have not come in main stream of society. It is possibility of development in tribal people by providing special attention towards them.

Most of the indigenous people have poor in economic condition and vulnerable groups of society. India is development country but the benefit of these development projects not get to tribal people even though they get compensation for their land and house. Due to acquisition of tribal's land for project displacement of tribal people is done then the question of rehabilitation and resettlement is come, the social and cultural identity of tribal people is missed out.[4]

Aims and Objectives of the Study:

- To study the Constitutional Provisions safeguarding rights of tribals.
- To analyze the provisions of Constitution relating to scheduled Tribes and its enforcement
- To study the National Legislations and International Convention about rights of Scheduled Tribes
- To analyse the judicial approach towards tribal people in India through judicial pronouncements.
- To find out the societal approach towards neglected class of tribals
- To suggest remedial measures for the enforcement of tribal rights and legislations.
- To protect and safeguard tribe culture and heritage in their respective areas

Significance of Topic of Research

People is aboriginal from any area or country is indigenous people. These peoplehave their own culture and traditions which they usually follow by them. These traditions also help to protect environment and save the earth also. It becomes

[4] New Universe of Human rights , J.S. Verma, page no. 214

duty of the organization to protect the rights tribal people and no one should interfere in culture activity.

In India various lawsare available to protect the rights of the these people but still the people are most neglected part of society. Tribals are original people in India. Its earliest jamatwho lived nearest to forest and depend on forest produce. Government should have special attention towards them at least basic facility should be given to fulfill their need.

The present study will explain the current legal system prevailing in India to deal with problem of the tribals and will explore safeguards provision at national and international level along with the decision given by courts. Endeavour will be to point out current status of tribal people all over the worlds. it will also help to know lacuna in implementing the Government policy and inadequacy of current legal system,

Area of Research

Tribal is considered weaker section of society. The Constitution safeguards provided for tribal to help them to come into mainstream of the larger society. Government provides reservation in education it helps the tribal to uplift themselves but taking education is not sufficient. Social status is equally important. Tribal has also right to live with human dignity.

With view to searching every detail regarding this topic various case related to tribal right and life will be studied in detail as also various tribal groups, their culture, language, food habits, religious system will analyze comparatively, so that this research topic will be comprehensively and all exclusively

In Present study the researcher will analyze judicial approach by studying various Judicial Decision relating to protection of tribal rights.

Review of literature

Tribals are parts of India, it is duty of government or general people to give an opportunity to them to uplift themselves by providing various facilities to develop so that tribal people can come in mainstream of the society. No legal research can be

completed without going through already worked upon by the expert, judiciary and legal luminaries. Researcher has reviewed the existing literature**.**

Dr,* J. N. Panday,*Constitutional law of India, in this book the author has attempted to discuss and analyze the constitutional provision of Fundamental right, Directive Principle of State Policy, Reservation policy in services update with amendment of Constitution in depth through commentary supported with relevant case laws is a worthwhile for research purpose. This book was very helpful for researcher in understanding the constitution safeguards provides for tribal and hope it extend its development and growth of tribal through judicial pronouncement.

V.N. Shukla's, *Constitution of India*, explain in details constitutional safeguard provided to the tribal people and special provision ofArticle 342 which is relating to tribal people and fifth scheduled, sixth scheduled etc., which was referred by researcher for this research.

Dr. Manjula S.R.,*Tribal Communities in India with reference to Forest Right Act 2006,* In this bookauthor hasput efforts todiscussthe meaning and definition of Tribal and give detail study on different types of Tribes. The author also throws light on the problems of tribal people face due to amendment of forest Right Act 2006

J.S. Varma*, The New Universe of Human Rights* this book was used by researcherto study UNCommission on Human Rightsand problem of indigenous people and how to protect of culture of tribal people and role of National institution in the protection of Human rights.

Dr. H.O. Agarwal*, Human Right,* made a brief analysis of human right pertaining to Tribal right which is provided under various laws. Author alsoexplains in details the concept of Human Right, it includes meaning, kinds of right, civil rights and political right. This book also gives the information about international convention. This book is very helpful to the researcher to understand the concept of human right, special provision for vulnerable group. This book also well explained the international convention i. e. UDHR, NHRC and convention of Economic, social and cultural rights.

Justice P.S Narayani, ***The Scheduled Caste and Scheduled Tribe,*** explains in detail provision of protection to tribes from another social group. This book also well explains civil right of tribals and provision for its protection. Researcher found

that this book was helpful to under the provision of Scheduled Tribes and Judicial approach.

D.N. Mathur*Maharashtra Land Laws,* this book was used by researcher to know the special provision for protection of tribal in regards to their occupancy andrestriction given by law to transfer from tribal to non-tribal.

Hypothesis

It is considering the solution of problem. Researcher has formulated following hypothesizes

1. Tribal are weaker section of the society and most neglected people in our country, Struggling to enter into main stream of the society but having very less representation in education, business, services
2. Though Constitutional safeguards are provided for tribal in India, it is not implemented in its true sense.
3. Tribal people have different language, script and culture but it seems to disappear to due contact with other people and apathy of the government.
4. Some tribal communities are still treated as criminal and if any crime committed firstly these people are targeted, considered suspected and arrested by the police officer without following the prescribed procedure. It is violation of human right of the people.

Research Methodology

Research methods means the method and technique which are used by the researcher to conclude his research. Research methodology is a way to systematically solve the research problem.

For present study, researcher seeks to adopt the doctrinal research method of study, which includes arrangement of legal propositions, analysis of case laws of higher judiciary and application of legal reasoning. Enactments and codes, rules made by the Parliament and State Legislatures, Foreign Laws, International Conventions and Protocols and Judicial pronouncements all are relevant data for this study. Researcher is going adopt analytical method of doctrinal research to analyse the

existing laws, international norms, wherever possible and judicial pronouncements under this present study.

For present study, as the primary source of data, the researcher has referred to the Constitution of India, National commission for scheduled tribes, Human Right relating to tribal. Researcher has also referred different cases of Supreme Court. As secondary source, the researcher has referred various textbooks of different authors on ScheduledTribes. Researcher also use the library as secondary tools for data collection. Researcher has also gone through various articles prepared by renowned writers and online publications.

Scope and Limitation

The present study has inherent limitation, its analytical study regarding theconstitutional safeguards provide to protects the Tribal people. The decision given by Hon'ble Supreme Court and High Court.

Collection of Data

As the researcher has taken the secondary method of data collection, most ofthe data will be available through published books, reports, article and journalpublished in India and worldwide. Therefore, library is the best place for the collection of data.

Period of Study

Researcher analyse the judicial decision relating to constitutional safeguards up to December 2022 cases decided by Hon'ble Supreme Court and High Court.

Expected Outcome

Researcher studies the provision of rights of tribal people which is given by Constitution of India and other relevant laws, rules and regulation. Researcher also study judicial pronouncement relating to protection of rights of tribal. Analysis of the legal provision will make; it will help to know the present situation of tribal in India and In International level also.

The present research will provide several benefits to the tribal people it creates awareness among the tribals about their rights.This study will explain and elaborate existing legal system with respect to the research topic and will enhance knowledge about rights provided by constitution of India and other relevant rule and regulation relating to tribal rights. The present study will be helpful in making aware about International Convention, Treaty.

The outcome of the study will result in good literature with analytical and conceptual clarity on the subject, which will enlighten legal scholars and students, as the research subject is substantially untouched, socially as well as in legal sphere.

The study will be very fruitful as an available literature for further research and to legal practitioners.

Details Discussion of the topic research

1. Introduction

Tribal is group of people which are inhabited prolonged period,lived in group isolated from other society. Tribals have different a tradition and culture are also different. Tribals are weaker section of society.To uplift the tribe and to protect their distinctiveness the constitution provides safeguards to tribal people.

For social and economic development of Tribal people Government has made provisions relating to education. Primary education ratio is increased because of implementation of various education policy and Government has paid attention towards it but in higher and technical education ratio of taking admission and completed degree is less as compared to other society inspite of giving reservation facility, age relaxation and minimum qualifying cut-of percentages.

Tribal people are struggling to have minimum wages, rights to work, have livelihood is violated, they don't get social security. One of main problem faced by the Adivasi is right relating to land. There is provision in land laws restriction of transfer of land from tribal people to non-tribal, and restoration of alienated land to tribal landowner is not properly implemented.

2. International Convention for the Protection of rights of Tribal

In this chapter Researcher study international convention Like United charter established in1945 the main object of UN is maintained peace, Human dignity of every person and equality to all.

Universal declaration on Human Rights Article 1 All human being is born free and equal in dignity and rights. Article 2 Everyone is entitled to all the right and freedom set forth in this declaration without distinction of any kind such race, color, sex, language, religion and political.

The International Work group for Indigenous Affairs (IWGIA) is a global human Right organization dedicated to promoting, Protecting and defending indigenous people right, this organization is focus on indigenous women because women are breadwinnersof the family and protection of human right defendant also.

3. Historical Study on protection of Tribal in India

Tribal people are integrated segments in India society. Earlierthere had tribal area which had conquered by tribal king. Tribal people had rich tradition, cultureand unique life style and custom. They lived in isolation and special geographical areas.

Tribal people were mostly depending on forest produce. They lived in near to forest. Use of forest product like firewood, flower, fruit, leaves, honey, housing material, edible nuts, medicinal herb were customary right. The tribals livelihood was totally depend upon forest product, they were making basket, fishing, hunting and gathered food for family.

Tribal was called fighter castes “LadhauJamat” because of tribal people fought against enemy. Bow and arrow were main instrument used to fight and self-defense.After British came India, in the Forest policy (1884) Tribal right on use forest produce had curtailed. The forest land and tribal land were used for construction of road, dam for water storage, reservation of forest. It was made for development but due to these activities Tribal rights and life was ruined.

In Indian history one name came forward that is Birsa Munda who fought for Violation of Tribal right against Britisher, the movement called Jal, Jungle and Jamin.

4. Constitutional Mechanism for the Protection of rights of Tribal

Indian Constitution is a law of land. It has provided safeguards to the weaker section of the society. In the constitution of India provides Fundamental Rights in Parts III. Article 14 Equality before law and Equal Protection to all, Article 15 Prohibited the discrimination on ground of religion, race, sex or place of birth, Article 16 equal opportunity in employment, Article 17 Prohibition Untouchability, Article 21 protect the life and personal liberty to every citizen including tribal. Article 46 pertaining to promotion of education and economic interest of scheduled tribes.Constitution of India provides reservation to scheduled tribe in education institutions and government job,

Article 15 was amended by the Constitution (1st amendment)Act 1951 under this clause, the state is empowered to make provisions for the protection of socially and educationally backward classes or for Scheduled Tribes.

Article 335 it gives rights to Tribal to claim in service and post. Article 338-A Constitution of India the National Commission for Scheduled Tribes has been set up, the function of this commission is to investigates and monitor all matter relating tosafeguards provide for Scheduled Tribes under Constitution and any other law time being in force.

5. Indian Laws for the protection of rights of tribal people and their enforcement

Constitution of India provided provision to protect the right of Tribal people on this basis various act enacted by parliament to protect the right of tribal people. To abolish the untouchability and punish the culpritand for enforcement of and disability arise thereof The Protection of Civil Right Act 1955 has been enacted.

The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 has been enacted for prevent the commission of offence against atrocities.

Fifth and sixth scheduled of the Constitution demark the area of the tribal in some state, it protects them from other. There is restriction to enter in tribal area.

Part IX of the constitution to provide the extension to this part panchayat to the schedule Area the provision of the Panchayats (Extension to the Schedule

Area) Act 1996. It gives the protection to tribal rights relating to area where the tribal live.

Section 36 of Maharashtra land Revenue Code 1966 give protection of tribal land, there is restriction in transfer of tribal land to non- tribal.The prevention of illegal transfer of tribal land and it will return to tribal people for that the Maharashtra Restoration of Lands to Scheduled Tribes Act 1974 has been enacted.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 most of tribal people depends on forest produce for their livelihood. The Act gives the right to use forest land for individual or common occupation for habitation or for self- cultivation for livelihood.

In addition to tribal people has right to collect, use or dispose forest produce which was collected them within and outside village boundaries.It also provides right of access to biodiversity and cultural diversity and apply traditional knowledge relating to it but hunting or trapping or extracting a part of the body of any species of wild animal is not allowed even though it was traditional right to tribal people.

6. Judicial study of selected case for enforcement of rights of tribal in India

Researcher study selected Supreme Court cases and High Courts cases which is decided by Hon'ble courts relating to protection of tribal rights. The decision of the Courts relating to enforcement of safeguards provided by Constitution of India to the Socially and economically backwards class that is included Scheduled Tribes.

M. Nagaraj V. Union of India[5] Supreme Court validates parliament decision to extension of reservation for SC/STs to include promotion. In Judgement court laid down three condition that the state must meet prior to granting a SC/STs a reservation in promotion.

I. The State must show the backwardness of the class

II.It must show that the class is inadequately represented in the service for which reservation in promotion will be granted

[5]AIR2007 SC 71

III. It must show that the reservation is in the interest of administration efficiency

Marri Chandra Shekhar Rao vs Dean, Seth G.S. Medical College[6]As per Article 342 of the constitution the relation between state and between state and Union Territories. If the person belongs to Scheduled Tribes category in one state and then he got the benefit of reservation from only that state where he belongs. He cannot claim to get same benefit of other state where he locates.

Bhaiya Ram Munda v. Anirudh Patar[7]It is stated that the person belongs to Munda tribes eventhough it is sub-tribe of Munda it considers as Scheduled Tribes and gets the benefit of reservation given by the Constitutions.

Jagan s/o ZipruDhoie v. State of Maharashtra[8]The Tahsildar took sue moto action for restoration of occupancy of tribal against the non-tribal. It considers as valid proceeding the initiations taken by authority.

Conclusion and Suggestion and Future Utility

This is chapter conclude the study by dealing with summary of finding, conclusion and recommendation on the topic of study, it analyze of various constitutional provision of fundamental right, directive principle of state policy, reservation policy in services for tribal.Enforcement of Constitutional safeguards for protect the tribal rights. Suggestion relating to problem of Tribal peoplewhich is faced by them. This study will explain and elaborate existing legal system with research topic and will enhance the knowledge about constitutional safeguards for the protection of Tribal rights.

Proposed Research Plan

I) In the Year 2022 researcher will collect Literatureand review it. Researcher will go through various literature, books, bare acts, notification, rule and regulation relating to safeguard provides to the tribal people. researcher also studies landmark judgment given by the Hon'ble Supreme Court and High Court

[6]2 May, 1990
[7]1970 2SCC825
[8]2004(3) Mh .L.J 49

and also studied various international convention who protect the rights of the tribal people. researcher collects the literature of rights of tribal in UK and USA.

II) In the year2023 date collection and interpretationof data will be done by researcher Look through theliterature review researcher will take appropriate data which is relating to research topic. After that interpretation of datawill made.

III) In this Year 2024 data analysis of data and it will help the researcher to arrive conclusion of research topic. research writing will start as per chaperization given and end with conclusion, finding and suggestion.

(Submitted, to the Research Recognition Committee (RRC) in the subject Law, faculty of humanities,Swami Ramanand Teerth Marathwada University Nandedfor consideration with or without suggestions, if any.)

(Researcher) **(Supervisor/Guide)**

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